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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12547 OF 2016

Hemant s/o Sadanand Surve
Age – 54 years, Occ – Advocacy,
Residing at Building No. 4, Asmita Park,
MHADA Colony, N-7, CIDCO,
Aurangabad – 431 003

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary to Government
Home Department, Mantralaya,
Mumbai -400 032
2. The Director General of Police,
Maharashtra State, Mumbai
Having its office located at Colaba
Mumbai – 400 020
3. The Inspector General of Police,
Marathwada Region, Aurangabad
Having its office located Sneh Nagar,
Aurangabad – 431 001
4. The Commissioner of Police, Aurangabad
Having its office located at Kotwalpura,
Aurangabad – 431 001
5. Pratap s/o Wamanrao Baviskar,
Age – 55 years, Occ – Service as
Police Inspector, Presently posted at
CIDCO, N – 7 Police Station,
Aurangabad 431 003
6. Madhav s/o Marotrao Korantallu,
Age – 37 years, Occ – Service as
Police Sub – Inspector,
Presently posted under the
Police Commissionarate,
Aurangabad – 431 001

RESPONDENTS

7. Mr. V. M. Rajput,
Age – 35 years, Occ – Assistant
Police Inspector, Presently posted with
CIDCO N-7 Police Station,
Aurangabad – 431 003

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Mr. Kshitij H. Surve, Advocate for the petitioner
Mr. S. P. Tiwari, AGP for respondent - State
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 3rd JULY, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Learned advocate for the petitioner vehemently submits that while setting aside “*no written statement*” order; impugned order does not take into account relevant aspects involved in the matter, particularly the ones as have been referred to in the decision of the Supreme Court in the case of “*Kailash V/s Nanhku and Others*” dated 6th April, 2005 in Appeal (Civil) No. 7000 of 2004. He submits that looking at the considerations as appearing in paragraph No. 4 onwards, none of the aspects are satisfied in the present case. He submits that suit proceedings are being prosecuted very cursorily and very casually by the defendants.

He submits that while order about "*no written statement*" had been passed on 28th August, 2014, application for setting aside the same came to be moved long after two years on 26th September, 2016. He, therefore, urges this court to indulge into the request made in this writ petition and set aside the order impugned.

3. Learned AGP appearing on behalf of the respondents, however, submits that advocate for defendant No. 6 had been busy in another court and could not attend the court when "*no written statement*" order had been passed and, as such, request had been made to set aside the "*no written statement*" order. He submits that the order has been passed taking into account larger interest and particularly to avoid delay and multiplicity of proceedings. He submits that the judgment cited on behalf of the petitioner also refers to that rule has been directory and not mandatory. In the given circumstances, while the court has exercised its discretion in allowing the application, the same may not be disturbed in discretionary powers of this court.

4. Having heard learned advocates as above, although learned AGP contends that order has been passed by the court by exercising discretion in favour of respondent No. 6 and on

technicalities the same shall not be disturbed in discretionary powers of this court may carry some force, however, looking at the circumstances, the amount of costs imposed appears to be rather on lower side. As such, the amount of costs is enhanced to Rs.5,000/- instead of Rs.500/- as referred to in the impugned order.

5. With aforesaid modification in costs in impugned order dated 24th October, 2016 passed by 6th Joint Civil Judge, Senior Division, Aurangabad on Exhibit-54 in Special Civil Suit No. 32 of 2014, writ petition is not being entertained further and is disposed of. The enhanced costs to be paid by respondent No. 6 for onward disbursement to the plaintiff. Costs be deposited within a period of eight weeks from the date of receipt of writ of this order. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]